

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE ELECTRONIC RECYCLING ASSOCIATION
OF ALBERTA d/b/a ELECTRONIC RECYCLING
ASSOCIATION, a Canadian non-profit
corporation,

Plaintiff,

v.

BASEL ACTION NETWORK, a Washington non-
profit corporation, and JAMES PUCKETT, an
individual,

Defendants.

Case No. 2:18-cv-1601

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. CONFIDENTIAL DESIGNATIONS

2 a. “CONFIDENTIAL” MATERIAL

3 “Confidential” material shall include the following documents and tangible things
4 produced or otherwise exchanged: Sensitive Personal Information and Confidential Business
5 Information, as defined below.

6 “Sensitive Personal Information” means the following identifying information: (a) names,
7 addresses, phone numbers, and e-mail addresses of ERA and BAN customers; (b) Social Security
8 numbers; (c) sensitive health-related data including medical records, (d) biometric identifiers; (e)
9 date of birth; (f) driver’s license or other state identification numbers, or foreign equivalents; (g)
10 military identification numbers; (h) passport numbers; (i) financial institution account numbers;
11 (j) credit or debit card numbers; or (k) other sensitive information relating to an individual entitled
12 to confidential status under applicable law, by order of this Court, or by agreement of the parties.

13 “Confidential Business Information” means (i) any individual or aggregated financial data,
14 analyses, or information; or (ii) proposals or suggestions for past or present products, past or
15 current business practices, or past or current overall strategy for the business as a whole and/or any
16 of its units, provided that such data, analyses, or information described in parts (i) and (ii) is not
17 generally known and/or which the Parties would normally not reveal to third parties or would
18 require third parties to maintain in confidence because the producing Party reasonably believes
19 that such data, analyses, or information might be injurious to the producing Party’s business
20 interests.

21 b. “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” - MATERIAL

22 “Highly Confidential – Attorneys Eyes Only” material means (i) individual or aggregated
23 customer or business data, analyses, or information; (ii) trade secrets, (iii) proposals or suggestions
24 for future products, future business practices, or overall strategy for the business as a whole and/or
25 any of its units or (iv) highly confidential research, development, business or commercial
26 information, provided that such data, analyses, or information described in parts (i) through (iv) is
27 not generally known and/or which the Parties would normally not reveal to third parties or would
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1 require third parties to maintain in confidence, where the producing Party reasonably believes that
2 the disclosure of such data, analyses, or information described in parts (i) through (iv) to another
3 Party or Non-Party would create a substantial risk of serious harm to the producing Party's
4 business interests.

5 3. SCOPE

6 The protections conferred by this agreement cover not only Confidential and Highly
7 Confidential – Attorneys Eyes Only material (as defined above), but also (1) any information
8 copied or extracted from Confidential or Highly Confidential – Attorneys Eyes Only material; (2)
9 all copies, excerpts, summaries, or compilations of Confidential or Highly Confidential –
10 Attorneys Eyes Only material; and (3) any testimony, conversations, or presentations by parties or
11 their counsel that might reveal Confidential or Highly Confidential – Attorneys Eyes Only
12 material.

13 However, the protections conferred by this agreement do not cover information that is in the public
14 domain or becomes part of the public domain through trial or otherwise.

15 4. ACCESS TO AND USE OF DESIGNATED MATERIAL

16 4.1 Basic Principles. A receiving party may use Confidential or Highly Confidential –
17 Attorneys Eyes Only material that is disclosed or produced by another party or by a non-party in
18 connection with this case only for prosecuting, defending, or attempting to settle this litigation.
19 Confidential and Highly Confidential – Attorneys Eyes Only material may be disclosed only to
20 the categories of persons and under the conditions described in this agreement. Confidential and
21 Highly Confidential – Attorneys Eyes Only material must be stored and maintained by a receiving
22 party at a location and in a secure manner that ensures that access is limited to the persons
23 authorized under this agreement.

24 4.2.a Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
25 by the court or permitted in writing by the designating party, a receiving party may disclose any
26 Confidential material only to:
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1 (a) the receiving party's counsel of record in this action, as well as agents or
2 employees of counsel who are assisting with the litigation and to whom it is reasonably necessary
3 to disclose the information for this litigation;

4 (b) the officers, directors, and employees (including in house counsel) of the
5 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
6 agree that a particular document or material produced is for Attorney's Eyes Only and is so
7 designated;

8 (c) experts and consultants to whom disclosure is reasonably necessary for this
9 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

10 (d) the court, court personnel, and court reporters and their staff;

11 (e) copy or imaging services retained by counsel to assist in the duplication of
12 Confidential material, provided that counsel for the party retaining the copy or imaging service
13 instructs the service not to disclose any Confidential material to third parties and to immediately
14 return all originals and copies of any Confidential material;

15 (f) the author or recipient of a document containing the information, an
16 employee, officer, or director of the corporate party that produced a document containing the
17 information, or a custodian or other person who otherwise possessed or knew the information; and

18 (g) any mediator or settlement officer, and their supporting personnel, mutually
19 agreed upon by the Parties engaged in settlement discussions.

20 4.2.b Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY"
21 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
22 designating party, a receiving party may disclose any Highly Confidential – Attorneys Eyes Only
23 material only to:

24 (a) the receiving party's outside counsel of record in this action, as well as
25 agents or employees of said outside counsel of record to whom it is reasonably necessary to
26 disclose the information for this litigation;

1 (b) experts and consultants to whom disclosure is reasonably necessary for this
2 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (c) the court, court personnel, and court reporters and their staff;

4 (d) copy or imaging services retained by counsel to assist in the duplication of
5 Highly Confidential – Attorneys Eyes Only material, provided that counsel for the party retaining
6 the copy or imaging service instructs the service not to disclose any Highly Confidential –
7 Attorneys Eyes Only material to third parties and to immediately return all originals and copies of
8 any Highly Confidential – Attorneys Eyes Only material;

9 (e) the author or recipient of a document containing the information, an
10 employee, officer, or director of the corporate party that produced a document containing the
11 information, or a custodian or other person who otherwise possessed or knew the information; and

12 (f) any mediator or settlement officer, and their supporting personnel, mutually
13 agreed upon by the Parties engaged in settlement discussions.

14 4.3 Filing Designated Material. The burden of demonstrating that any specific
15 information or document is Confidential or Highly Confidential – Attorneys Eyes Only is on the
16 party claiming its confidentiality, even if the objecting party files a motion to challenge the
17 designation of confidentiality. Upon reasonable notice and request by a filing party, the
18 designating party shall meet and confer with the filing party, in accordance with Local Civil Rule
19 5(g)(3)(A), at least one day in advance of a filing that contains, discusses, or references
20 Confidential or Highly Confidential – Attorneys Eyes Only material to determine whether the
21 designating party will remove the confidential designation, whether the document can be redacted,
22 or whether a motion to seal or stipulation and proposed order is warranted. During the meet and
23 confer process, the designating party must identify the basis for sealing the specific confidential
24 information at issue, and the filing party shall include this basis in its motion to seal, along with
25 any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures
26 that must be followed and the standards that will be applied when a party seeks permission from
27 the Court to file material under seal. A party who seeks to maintain the confidentiality of its
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1 information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party
2 filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being
3 denied, in accordance with the strong presumption of public access to the Court's files.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
6 or non-party that designates information or items for protection under this agreement must take
7 care to limit any such designation to specific material that qualifies under the appropriate
8 standards. The designating party must designate for protection only those parts of material,
9 documents, items, or oral or written communications that qualify, so that other portions of the
10 material, documents, items, or communications for which protection is not warranted are not swept
11 unjustifiably within the ambit of this agreement.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
13 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
14 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
15 and burdens on other parties) expose the designating party to sanctions.

16 If it comes to a designating party's attention that information or items that it designated for
17 protection do not qualify for protection, the designating party must promptly notify all other parties
18 that it is withdrawing the mistaken designation.

19 5.2 Manner and Timing of Designations. Except as otherwise provided in this
20 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
21 ordered, disclosure or discovery material that qualifies for protection under this agreement must
22 be clearly so designated before or when the material is disclosed or produced.

23 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
24 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
25 the designating party must affix the word "CONFIDENTIAL" to each page that contains
26 Confidential material and must affix the words "HIGHLY CONFIDENTIAL - ATTORNEYS
27 EYES ONLY" to each page that contains Highly Confidential - Attorneys Eyes Only material. If
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1 only a portion or portions of the material on a page qualifies for protection, the producing party
2 also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the
3 margins).

4 (b) Testimony given in deposition or in other pretrial proceedings: the parties
5 and any participating non-parties must identify on the record, during the deposition or other pretrial
6 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
7 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
8 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
9 exhibits thereto, as Confidential or Highly Confidential – Attorneys Eyes Only. If a party or non-
10 party desires to protect Confidential or Highly Confidential – Attorneys Eyes Only information at
11 trial, the issue should be addressed during the pre-trial conference.

12 (c) Other tangible items: the producing party must affix in a prominent place
13 on the exterior of the container or containers in which the information or item is stored the word
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY.” If only a
15 portion or portions of the information or item warrant protection, the producing party, to the extent
16 practicable, shall identify the protected portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
18 designate qualified information or items does not, standing alone, waive the designating party’s
19 right to secure protection under this agreement for such material. Upon timely correction of a
20 designation, the receiving party must make reasonable efforts to ensure that the material is treated
21 in accordance with the provisions of this agreement.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Except as addressed in Section 4.3, which controls the
24 timing and sequence of confidentiality challenges for court filings, any party or non-party may
25 challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating
26 party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
27 unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does
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1 not waive its right to challenge a confidentiality designation by electing not to mount a challenge
2 promptly after the original designation is disclosed.

3 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
4 regarding Confidential or Highly Confidential – Attorneys Eyes Only designations without court
5 involvement. Any motion regarding Confidential or Highly Confidential – Attorneys Eyes Only
6 designations or for a protective order must include a certification, in the motion or in a declaration
7 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
8 affected parties in an effort to resolve the dispute without court action. The certification must list
9 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
10 to-face meeting or a telephone conference.

11 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
12 intervention, other than the in the circumstances addressed in Section 4.3, which controls the
13 timing and sequence of confidentiality for court filings, the designating party may file and serve a
14 motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule
15 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party.
16 Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose
17 unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions.
18 All parties shall continue to maintain the material in question as Confidential until the Court rules
19 on the challenge.

20 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
21 LITIGATION

22 If a party is served with a subpoena or a court order issued in other litigation that compels
23 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
24 “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY,” that party must:

25 (a) promptly notify the designating party in writing and include a copy of the
26 subpoena or court order;
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1 (b) promptly notify in writing the party who caused the subpoena or order to
2 issue in the other litigation that some or all of the material covered by the subpoena or order is
3 subject to this agreement. Such notification shall include a copy of this agreement; and

4 (c) cooperate with respect to all reasonable procedures sought to be pursued by
5 the designating party whose Confidential or Highly Confidential – Attorneys Eyes Only material
6 may be affected, including not producing the designating party’s documents absent a court order
7 to do so if that party objects to disclosure, provided that the designating party moves for relief
8 within seven (7) days of receiving the notice under 7(a).

9 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential
11 or Highly Confidential – Attorneys Eyes Only material to any person or in any circumstance not
12 authorized under this agreement, the receiving party must immediately (a) notify in writing the
13 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized
14 copies of the protected material, (c) inform the person or persons to whom unauthorized
15 disclosures were made of all the terms of this agreement, and (d) request that such person or
16 persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
17 Exhibit A.

18 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
19 MATERIAL

20 When a producing party gives notice to receiving parties that certain inadvertently
21 produced material is subject to a claim of privilege or other protection, the obligations of the
22 receiving parties are those set forth in the Parties’ Agreement Regarding Discovery of
23 Electronically Stored Information and Order. The Parties agree to the entry of a non-waiver order
24 under Fed. R. Evid. 502(d) as set forth herein.

25 10. NON TERMINATION AND RETURN OF DOCUMENTS

26 Within 60 days after the termination of this action, including all appeals, each receiving
27 party must return all Confidential and Highly Confidential – Attorneys Eyes Only material to the
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1 producing party, including all copies, extracts and summaries thereof. Alternatively, the parties
2 may agree upon appropriate methods of destruction.

3 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
4 documents filed with the Court, trial, deposition, and hearing transcripts, correspondence,
5 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
6 product, even if such materials contain Confidential material.

7 The confidentiality obligations imposed by this agreement shall remain in effect until a
8 designating party agrees otherwise in writing or a court orders otherwise.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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12 Dated: January 16, 2019

13 /s/ J. Douglas Baldridge
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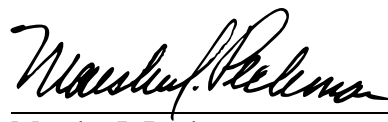
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26 *Attorneys for Defendants Basel Action Network*
27 *and James Puckett*
28

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2 PURSUANT TO STIPULATION, IT IS SO ORDERED

3 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
4 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
5 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
6 documents, including the attorney-client privilege, attorney work-product protection, or any other
7 privilege or protection recognized by law.
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9 DATED: January 17, 2019
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13 Marsha J. Pechman
14 United States District Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on
7 _____[date] in the case of *The Electronic Recycling Association of Alberta v. Basel Action*
8 *Network and James Puckett*, No. 2:18-cv-1601-MJP. I agree to comply with and to be bound by
9 all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to
10 so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
11 promise that I will not disclose in any manner any information or item that is subject to this
12 Stipulated Protective Order to any person or entity except in strict compliance with the provisions
13 of this Order. I also understand that I am to retain all of the materials that I receive containing
14 Confidential or Highly Confidential – Attorneys Eyes Only material in a secure place in a manner
15 consistent with the Stipulated Protective Order.

16 I will return all Confidential and Highly Confidential – Attorneys Eyes Only material that
17 comes into my possession, and documents or things that I have prepared relating thereto, to counsel
18 for the party by whom I am employed or retained when requested to do so by that counsel.

19 I further agree to submit to the jurisdiction of the United States District Court for the
20 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
21 Order, even if such enforcement proceedings occur after termination of this action.

22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____
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